



POLICE DEPARTMENT

December 2, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Patrick Rafferty
Tax Registry No. 942397
Police Service Area 2
Disciplinary Case Nos. 2012-7784 & 2013-10732

The above-named member of the Department appeared before me on
January 28, 2014, April 11, 2014, and June 9, 2014, charged with the following:

Disciplinary Case No. 2012-7784

1. Said Police Officer Patrick Rafferty, assigned to the 33rd Precinct, on or about July 13, 2012, having been directed by New York City Police Captain James Donnelly to comply with the directives of the [REDACTED] did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 2013-10732

1. Said Police Officer Patrick Rafferty, while assigned to the 33rd Precinct, while off-duty, on or about May 19, 2012, within the confines of the 68th Precinct, after being involved in an off-duty incident, did fail and neglect to request response of patrol supervisor, precinct of occurrence.

P.G. 212-32, Page 1, Paragraph 2 – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE

2. Said Police Officer Patrick Rafferty, while assigned to the 33rd Precinct, while off-duty, on or about May 19, 2012, within the confines of the 68th Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: after being involved in an off-duty incident, did fail and neglect to properly identify himself to uniformed Members of the Service.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq.

Respondent, through his counsel, entered a plea of Not Guilty in Disciplinary Case No. 2012-7784. In Disciplinary Case No. 2013-10732, Respondent entered a plea of Guilty to both Specifications and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2012-7784

Respondent is found Guilty.

Disciplinary Case No. 2013-10732

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Captain James Donnelly as its only witness.

Captain James Donnelly

Donnelly, a 20-year member of the Department who has served in the Medical Division for the past six years, recalled that on July 13, 2012, he met with Respondent at the Medical Division. Donnelly testified that prior to this meeting he became aware that the day before Respondent had met with Dr. Galvin of the Special Medical District who is assigned uniformed members of the service (UMOS) who have been designated Chronic B Sick because they have taken excessive sick leave. Dr. Galvin had then referred Respondent to the Counseling Unit for an assessment. Donnelly testified that prior to meeting with Respondent he spoke with Sergeant Daniel Sweeney, who is now retired but who was then the commanding officer of the Counseling Unit. Sweeney told him that Respondent had been directed to [REDACTED]. Respondent was then referred by Sweeney to Donnelly whose role was to order Respondent to comply with [REDACTED]. Donnelly did not review any paperwork regarding Respondent before he met with him.

Donnelly met with Respondent at about noon in his office. Donnelly tried to convince Respondent to comply with [REDACTED] but he was not successful. Donnelly informed Respondent that if he failed to comply, he would be suspended. They discussed the situation for about an hour and a half. Donnelly then gave Respondent a direct order to [REDACTED]. Respondent refused. Donnelly then suspended Respondent from duty consistent with a Department policy that

had been approved by the Legal Bureau. Donnelly later learned that after Respondent returned from suspension he [REDACTED].

On cross-examination, Donnelly testified that he did not know whether Dr. Galvin had referred Respondent to the [REDACTED] from Dr. Mary Flynn. Donnelly testified that he was not aware that Dr. Flynn had accused Respondent of [REDACTED]. Donnelly confirmed that he did not personally assess Respondent; that no one informed him of the reason why Respondent needed treatment; and that the UMOS who met with Respondent at [REDACTED] do not have licenses to practice medicine. Donnelly testified that when he suspended Respondent he was not aware of Respondent's medical condition or that he was scheduled to undergo surgery. Donnelly agreed that he had no personal knowledge regarding Sweeney's training; that Sweeney did not provide any specific details to him about how the [REDACTED] assessed Respondent; and that he had ordered Respondent to attend treatment based on what other people had told him.

Respondent's Case

Respondent called Dr. Andrew Davy as a witness and testified on his own behalf.

Dr. Andrew Davy

Davy testified that he was Respondent's treating physician from May 2012 through July 2012. Based on his resume and professional experience,¹ he was deemed a

¹ He received a Bachelor's Degree in Chemical Engineering from Columbia University School of Engineering and Applied Science, M.D. degree from Columbia University College of Physicians and Surgeons, performed a one-year internship in internal medicine at New York Presbyterian Hospital and a one-year pain medicine fellowship at the University of Rochester, Strong Memorial Hospital. He has

medical expert in the field of [REDACTED]. He treated Respondent for [REDACTED]
[REDACTED] an
[REDACTED] that is caused by trauma. His treatment plan for
Respondent included [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Davy instructed Respondent to take
[REDACTED]
[REDACTED]
[REDACTED]

He testified that as an expert on the use of [REDACTED] he is "keenly aware" that some
patients [REDACTED]
[REDACTED]. A patient who is
[REDACTED]
[REDACTED]. Davy testified that, based
upon his training and experience, Respondent never exhibited any behavior indicating
[REDACTED]. During his treatment of Respondent, Davy formed
the opinion that Respondent was using [REDACTED] appropriately and that the
[REDACTED] [REDACTED].

Davy opined that there is a condition called [REDACTED]
[REDACTED]

practiced full-time in [REDACTED] for ten years and is considered a regional expert in the use of [REDACTED]
[REDACTED]. He has been deemed an expert witness by trial
courts.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On cross-examination, Davy acknowledged that he was being compensated for his testimony at this trial at his usual fee of \$500 per hour. He said that he testified as the treating physician for his patients about two to three times per month. As an expert, he testifies about three times per year. [REDACTED]

[REDACTED]

[REDACTED]. Davy stopped treating Respondent because the Department stopped the authorizations. Davy agreed [REDACTED]

[REDACTED] he would not have recommended [REDACTED] treatment program for him.

On re-direct examination, Davy was shown a printout [REDACTED]

[REDACTED]

[REDACTED]. Davy

testified that Respondent [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On further direct examination, Davy testified [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On further cross examination, Davy testified that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Davy provided instructions to Respondent [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent

Respondent, an eight-year member of the Department, is presently assigned to PSA 2, Viper Unit. During May 2012, he was assigned to the 33 Precinct.

With regard to Disciplinary Case No. 2013-10732, Respondent testified that while he was off duty on the evening of May 19, 2012, Respondent went to the Trace Bar and Restaurant, 8814 3rd Avenue, Brooklyn (the bar), which is located within the confines of the 68 Precinct. Inside the bar, he spoke with a woman who then left the bar. A few minutes after she left, he was grabbed from behind in a choke hold and someone punched him in the face and back of head. He was then "gang assaulted by a few individuals" and after 20 to 30 seconds, the bar's bouncers broke up the assault and Respondent left the bar. Outside the bar, Respondent called his brother, who is also a UMOS, told him what had happened, and asked him to come and get him. While he was on the phone with his brother, someone confronted him again. After his brother arrived Respondent was punched in the face and the brother separated Respondent from his attacker.

After his attackers left the area, UMOS assigned to the 68 Precinct arrived in front of the bar. Although he told these UMOS what had happened, Respondent admitted that he did not identify himself to them as a UMOS because he "was just jumped. [He] was just gang assaulted and [he] didn't know what was going on and [he] just wanted to go home" He went home with his brother. His brother told him that he needed medical

attention and took him to the hospital where he was treated. At the hospital, his brother called Respondent's supervisor and told him what had happened. Respondent agreed that under the circumstances he should have identified himself as a UMOS to the 68 Precinct UMOS.

With regard to Disciplinary Case No. 2012-7784, Respondent testified that during November, 2010 while he was assigned to the 77 Precinct, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Donnelly gave Respondent an order to go to an [REDACTED] facility.

Respondent believed it was an unlawful order [REDACTED]

[REDACTED] Donnelly then suspended Respondent.

[REDACTED]

[REDACTED]

[REDACTED] The [REDACTED] told Respondent that if he did not enter

[REDACTED] treatment he would be suspended again and "keep getting suspended and

eventually terminated," so Respondent agreed to attend an [REDACTED] program.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Respondent was then brought to Donnelly. [REDACTED]

[REDACTED] Although Respondent agreed that the Department is a paramilitary organization, he asserted that he must comply with an order only if it is a lawful order. [REDACTED]

[REDACTED]

[REDACTED] After his suspension, he involuntarily complied with the order to enter inpatient treatment because he was told that if he did not, he would eventually get suspended and then terminated. [REDACTED]

[REDACTED]

FINDINGS AND ANALYSISDisciplinary Case No. 2013-10732

Respondent, having pleaded Guilty, is found guilty. The testimony Respondent offered in mitigation of the penalty to be imposed for the misconduct he pleaded guilty to will be discussed in the Penalty section of this decision.

Disciplinary Case No. 2012-7784

It is charged that Respondent failed to comply with Captain Donnelly's order that he comply with the [REDACTED] directive that he participate in an [REDACTED] [REDACTED] program.

Departmental disciplinary decisions have consistently held that because the Department is a paramilitary organization, the general rule is that when an order is issued to a member by a superior officer, the order, unless clearly illegal or improper, must be promptly obeyed and that a member who wishes to contest an order can only challenge the order post compliance. Moreover, with regard to an order that directs a UMOS to participate in an in patient counseling program, since UMOS carry firearms, drive Department vehicles, and must be fit for duty 24 hours a day seven days a week, the Department has a strong interest in insuring that a UMOS is not engaging in alcohol or substance abuse which could have an adverse effect on the UMOS' job performance.²

Nonetheless, since an order to attend a [REDACTED] program can seriously disrupt a member's personal life, where a Respondent asserts that

² See Case Nos. 82583, 82607 & 83275/07 (May 18, 2009) and Case Nos. 83855, 83936 & 83964/08 (May 22, 2008).

he or she refused to comply with an order to participate in an [REDACTED] program because the order was issued without a sufficient basis, the trial record must be examined to ascertain the basis for the issuance of the order.³

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] I find that the trial record as a whole, including Respondent's own testimony, contains facts which sufficiently establish that Donnelly's order was a lawful order.

³ See *Case Nos. 2010-2504 & 2010-2915* (Oct. 7, 2014).

⁴ See *Case No. 2012-6673* (May 27, 2014).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thus, Respondent's testimony that Dr. Galvin had referred him to [REDACTED]
[REDACTED] supports Donnelly's testimony that prior to issuing his order to Respondent to attend
an [REDACTED] program, he became aware that Respondent had met with Dr.
Galvin who had referred Respondent to [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵

Since the record establishes that there was a sufficient basis to justify an order that
Respondent attend [REDACTED] program, the record establishes that
Donnelly's order that Respondent participate in an [REDACTED] program was a
lawful order. Since Respondent failed to comply with this lawful order, Respondent is
found Guilty.

⁵ [REDACTED]
[REDACTED]
[REDACTED]

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no prior formal disciplinary record.

Under Disciplinary Case No. 2012-7784, Respondent has been found Guilty of failing to comply with a lawful order to comply with [REDACTED]

[REDACTED] In *Case No. 2012-6673* (May 27, 2014), a nine-year police officer who had no prior disciplinary record forfeited 30 suspension days already served for failing to comply with [REDACTED]

[REDACTED]

Under Disciplinary Case No. 2013-10732, Respondent has pleaded Guilty and admitted that he failed to request the response of the patrol supervisor, precinct of occurrence, and that he failed to properly identify himself to responding UMOS after he was involved in an off-duty incident. In *Case No. 2012-7976* (Dec. 31, 2013) a 29-nine-year detective with no prior disciplinary record forfeited 22 suspension days for, while off duty, failing to properly identify himself to on-duty UMOS who responded to an incident. In that case the detective also failed to comply with orders issued by the on-duty UMOS. More recently, in *Case No. 2013-9692* (Apr. 18, 2014) a six-year police officer with no prior disciplinary record forfeited 20 vacation days for failing to remain at the scene and failing to notify the patrol supervisor after he was involved in an off duty

incident. In that case the officer also engaged in a physical altercation with an on-duty UMOS and sent [REDACTED] derogatory text messages.

Respondent testified that the reason that he failed to identify himself as a UMOS to the responding UMOS was because he “was just jumped. [He] was just gang assaulted and [he] didn’t know what was going on and [he] just wanted to go home” This testimony does not serve to mitigate the penalty to be imposed on Respondent for this failure. As for his failure to request the response of the 68 Precinct patrol supervisor to the bar scene, Respondent acknowledged that he did not personally notify anyone other than his brother that he had been attacked even though he could have done so while he was at the scene, while he was at home, or while he was in the hospital’s waiting room.

Therefore, it is recommended that Respondent forfeit the 31 suspension days he has already served for failing to comply with Donnelly’s order [REDACTED] [REDACTED] and that, for his admitted misconduct of failing to request the response of the patrol supervisor and failing to properly identify himself to responding UMOS after he was involved in an off-duty incident, he should also forfeit 20 vacation days for a total forfeiture of 51 penalty days.

APPROVED

JAN 26 2015
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,

Robert W. Vinal
Robert W. Vinal
Assistant Deputy Commissioner – Trials

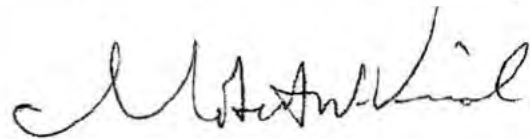
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PATRICK RAFFERTY
TAX REGISTRY NO. 942397
DISCIPLINARY CASE NOS. 2012-7784 & 2013-10732

The Respondent received an overall rating of 3.0 on his 2013 annual performance evaluation, 3.0 on his 2012 annual evaluation, and 2.5 on his 2011 annual evaluation. He has no medals. [REDACTED]

[REDACTED] He has monitoring records but he has no prior formal disciplinary adjudications.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials